



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 17, 2023

IN THE MATTER OF:

Appeal Board No. 625690

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, holding the claimant ineligible to receive benefits, effective April 26, 2021, on the basis that the claimant was not available for employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed September 6, 2022 (), the Administrative Law Judge granted the claimant's application to reopen 022-15635, and modified the initial determination, to be effective April 26, 2021, through September 12, 2021, and, as so modified, sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it modified the initial determination. The Board considered the arguments contained in the written statement submitted by the claimant.

Our review of the record reveals that the case should be remanded to hold a further hearing. The record was not sufficiently developed on the initial determination of availability. The parties should have another opportunity to submit additional testimony and other evidence on this issue.

At the further hearing, the parties will offer additional testimony and evidence as to the claimant's previous employment and assignments, and whether any such work performed was done remotely. Any documentary evidence in support of such testimony shall be offered at hearing for potential entrance into the

record.

The Administrative Law Judge shall take all testimony and evidence necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it modified the initial determination, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER